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IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

No. [redacted] 109

HENRY DU BOIS' SONS CO., INC.,

Petitioner,

against

HAZEL DUNBAR, as Administratrix under limited letters of the Estate of ROBERT DUNBAR, deceased,

Respondent.

REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI

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New York 4, N. Y.

VINCENT A. CATOGGIO,
of Counsel.

In The

Supreme Court of the United States

OCTOBER TERM, 1959

No. 965

HENRY DU BOIS' SONS CO., INC.,

Petitioner,

against

HAZEL DUNBAR, as Administratrix under limited letters of the Estate of ROBERT DUNBAR, deceased,

Respondent.

REPLY BRIEF ON PETITION FOR WRIT OF CERTIORARI

The respondent's brief argues that the jury finding in answer to Question No. 5 does not justify petitioner's statement that the jury found decedent guilty of "breach of duty", and that petitioner's conclusion that it does "is a species of sophistry that transforms the essential nature of the jury's verdict".

Should the language of Question No. 5 leave any doubt as to what the jury found, that doubt is removed when we read the trial court's charge (Appellant's Appendix in Court of Appeals, pp. 80 to 99). Although calling the case contributory negligence, the court repeatedly told the jury the question as to his fault was simply whether decedent watched the bilges and manned the pumps.

The Court charged:

"The deceased had no authority to control the movement of the *Trenton* or to employ others to work under him aboard. It was his duty to perform generally the duties of a deckhand, and make fast and unfasten mooring and tow lines; to help clean up the barge, to watch the bilge and help man the pumps when necessary." (84)

* * *

"It is the contention of the DuBois Company— * * * that the deceased failed to perform his work and keep watch on the bilge and man the pumps * * *" (85)

* * *

"The duty to perform and to determine what should have been done for the safe maintenance of the *Trenton* with reference to the manning of the pumps and the operating of the pumps when necessary rested and remained with those aboard the *Trenton* and not on the master or crew of the tug." (92)

When the Court told the jury that petitioner's contention rested solely on the failure of deceased "to perform his work and keep watch on the bilges and man the pumps", their answer to Question No. 5 was a clear statement that decedent did not watch the bilges and man the pumps.

New York, N. Y., July 6, 1960.

Respectfully submitted,

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